

In Opinion No. 776 of Opinions of the Attorney General for 1927, it was the opinion of the then Attorney General that an application by county commissioners for state aid in the construction of a highway constituted a pending proceeding within the meaning of Section 26, supra, as shown by the following words of the syllabus:

“A proceeding is ‘pending’ within the meaning of Section 26 of the General Code when a board of county commissioners makes application for state aid under the provisions of Section 1191 of the General Code, and such a proceeding may be completed under the present law after the effective date of House Bill No. 67. * * *”

In the light of the preceding interpretations of Section 26, supra, it becomes obvious that it calls for no straining of construction to find, in the instant case, that at the time of the amendment of the law here involved, there was a pending proceeding within the provisions of Section 26, Ohio General Code and that, therefore, that section would operate as a saving clause to enable yourself, as administrator of the Bureau of Unemployment Compensation, to now redetermine the benefits here referred to.

I, therefore, conclude and it is my opinion that it lies within your authority as administrator of the Bureau of Unemployment Compensation, under the circumstances here noted, to cause a redetermination of benefits of unemployment compensation to be made in accordance with modified Rule 3 adopted February 23, 1939, by the Unemployment Compensation Commission.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

800.

MUNICIPAL COURT, AKRON—SECTION 1579-540 G. C., HOUSE BILL 343, 93RD GENERAL ASSEMBLY—TIME OPERATIVE, JANUARY 1, 1940—AMENDMENT—PRESIDING JUDGE—THREE JUDGES—BAILIFF—DEPUTY BAILIFFS—SALARY.

SYLLABUS:

1. *The provisions of Section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), do not become operative until January 1, 1940, at which time the Municipal Court of Akron will consist of a presiding judge and three other judges.*

2. *Until the operative date of Section 1579-540, General Code*

(House Bill No. 343, 93rd General Assembly), those persons now serving as bailiff and deputy bailiffs of the Municipal Court of Akron may continue in office at the same rate of pay each was receiving prior to said amendment.

COLUMBUS, OHIO, June 23, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your request for my opinion on the following:

"We have been requested by a judge of the Municipal Court, Akron, Ohio, through our State Examiner who is conducting the regular annual examination of that city, to seek your advice and opinion concerning the recent amendments to the Akron Municipal Court Act, provided in House Bill No. 343, 93rd General Assembly. The letter received from the Judge of said Court is inclosed herewith.

Will you kindly consider the following questions and give us your opinion in interpretation of the amendments provided in House Bill No. 343:

Question 1. Does the act (House Bill No. 343) require the immediate dismissal of present bailiffs and the appointing of a chief bailiff and deputy bailiffs not to exceed ten? If so, why does the bill use the language 'four judges' when the Court now is composed of five judges, and if so, where is the enabling provision of said act which would permit present judges to appoint such bailiffs?

Question 2. Since there will be no elected presiding judge until January, 1940, how can this provision be put into effect until that time?

Question 3. Since the section under which present bailiffs were appointed has apparently been repealed and no provision made for appointment of bailiffs, shall present bailiffs continue until the amended act can be complied with, and if so, are said bailiffs to be paid at their present rate or shall they receive the rate set forth in the amended act?"

Your questions are concerned with the status of the present bailiff and deputy bailiffs of the Municipal Court of Akron, in view of the enactment by the 93rd General Assembly of House Bill No. 343, approved by the Governor on May 11, 1939, which revises the laws relating to said court. This act provides for a reduction in the number of judges comprising said court. The act carried an emergency clause and consequently went into effect immediately upon approval by the Governor. However, the actual reduction will not take place until January 1, 1940, by reason

of the saving clause contained in section 1579-502, General Code (House Bill No. 343, 93rd General Assembly), as follows:

“The number of judges and present incumbents shall continue until the expiration of the respective terms of present incumbents. At the regular municipal election in the year one thousand nine hundred thirty-nine there shall be elected one judge and one presiding judge, and at the regular municipal election in the year one thousand nine hundred forty-one two judges.”

By virtue of the clause above quoted, the three members of the present court whose terms expire December 31, 1939, will be replaced the following day by one judge and one presiding judge duly elected at the November election of this year.

The provisions for the appointment of a bailiff and deputy bailiffs of the Municipal Court of Akron, their salaries, bonds, etc., are contained in section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), as follows:

“The judges shall appoint a bailiff and such number of deputy bailiffs, not to exceed ten, as a majority of the four judges may order, and each incumbent so appointed may be removed by a majority of such judges at their sole and uncontrolled discretion. Such bailiff and deputy bailiffs shall perform for the municipal court services similar to those usually performed by the sheriff and his deputies for the court of common pleas, and by constables for justices of the peace, and shall perform such other duties as may be required by the presiding judge.

The salary of the bailiff shall be as fixed by a majority of the judges, but shall not be less than one hundred seventy-five dollars nor more than two hundred dollars per month. The salary of each deputy bailiff shall be as fixed by a majority of the judges, but not less than one hundred dollars and not more than one hundred fifty dollars per month, all payable in monthly installments out of the treasury of the city of Akron. Before entering upon the duties of their offices, the bailiff and deputy bailiffs shall each give bond to the city of Akron, the bailiff in the sum of five thousand dollars, and the deputy bailiffs each in the sum of two thousand five hundred dollars, with surety to the approval of the presiding judge, conditioned for the faithful performance of their duties as such officers respectively. Each of said bonds shall enure to the benefit of any person who shall suffer loss by reason of a default in any of the conditions of said bond.”

This amendment places those persons under the sole and exclusive jurisdiction of a majority of the four municipal judges constituting the court. It further limits the number of deputy bailiffs which the judges may appoint and reduces the salaries formerly allotted to the bailiff and his deputies. The questions now arise concerning the status and salaries of the present bailiff and deputy bailiffs who were appointed under authority of section 1579-540, General Code, as it existed prior to its amendment by the 93rd General Assembly.

As stated, House Bill No. 343, *supra*, went into effect immediately upon approval by the Governor. This, however, does not make section 1579-540, as set forth therein, operative immediately. Said section does not become operative until such time as the Municipal Court of Akron is composed of a presiding judge and three other judges. This is true because of the fact that until that time there will not exist the appointing authority, to-wit, four judges, provided for in said section. The sole reason for declaring House Bill No. 343, *supra*, an emergency measure is contained in the emergency clause therein, which reads as follows:

“This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the requirement that judges and a clerk of said court be elected at the regular election in 1939 and candidates may be required to file their declarations of candidacy before this act would otherwise become effective. Therefore, this act shall go into immediate effect.”

The statute under consideration states that “the judges shall appoint a bailiff and such number of deputy bailiffs, not to exceed ten, as a majority of the *four* judges may order, and each incumbent so appointed may be removed by a majority of such judges at their sole and uncontrolled discretion.” This language is clear and does not require any interpretation or construction. Certainly, in view of that legislative mandate, the present court of five judges could not act thereunder. That power rests exclusively with a court of four judges, which court will not come into existence until January 1, 1940.

I must therefore conclude that it was the intention of the Legislature that the reduction in number of deputy bailiffs and the change in salary of the bailiff and deputy bailiffs should not come about until the Municipal Court of Akron consists of four judges only.

The changes brought about by House Bill No. 343, *supra*, affected only the number of deputy bailiffs and the salaries allowed to them and to the chief bailiff. It will be observed that it did not abolish those offices. Such officers continue, and necessarily so, in order that the court might properly function. It would therefore follow that these now occupying

the offices of bailiff and deputy bailiffs of the Municipal Court of Akron should continue in office at the rate of pay set forth in section 1579-540, General Code, prior to its amendment, until it becomes possible for the court to comply with the provisions of said section as amended.

In view of the above, I am therefore of the opinion that:

1. The provisions of section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), do not become operative until January 1, 1940, at which time the Municipal Court of Akron will consist of a presiding judge and three other judges.

2. Until the operative date of section 1579-540, General Code (House Bill No. 343, 93rd General Assembly), those persons now serving as bailiff and deputy bailiffs of the Municipal Court of Akron may continue in office at the same rate of pay each was receiving prior to said amendment.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

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DELINQUENT LAND TAX FORECLOSURE — WHERE PREMISES UNSOLD, NO BIDDERS — ORDER, REAPPRAISEMENT AND SALE—TAX LIEN FORECLOSURE, REQUIRES APPRAISEMENT—ENTRY—TAX LIST AND DUPLICATE—TWO OR MORE TRACTS OR LOTS—WHERE TAKEN TOGETHER FORM ONE PARCEL—SECTIONS 5718, 5719 G. C.

SYLLABUS:

1. *An order of reappraisal and sale may be issued in a delinquent land tax foreclosure proceedings where the premises have been appraised as provided in section 5719, General Code, offered for sale but returned unsold for want of bidders.*

2. *There is no authority for the confirmation of a tax lien foreclosure sale without appraisal where the amount of bid is less than the total amount of the taxes and assessments, or any part thereof, found due and unpaid, and the penalties, interest, costs and charges, together with all taxes and assessments payable subsequent to the certification for foreclosure and costs of such action charged against the property in question. If an appraisal has been had, as provided in section 5719, General Code, such lands shall be sold for at least two-thirds of the appraised value thereof and after payment of costs, the treasurer shall receive the balance thereof in full discharge of all taxes, assessments, penalties, interest and charges included in the finding.*

Section 5718, General Code, requires the county auditor to make a separate delinquent land tax certificate for such entry on the tax list and